

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRAVIS JUSTIN CUELLAR,

Petitioner,

v.

BROOK BERGMAN, Madera County
District Attorney,

Respondent.

No. 1:20-cv-00579-NONE-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
DUPLICATIVE AND SUCCESSIVE
PETITION FOR WRIT OF HABEAS
CORPUS, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

(Doc. No. 6)

Petitioner is a state prisoner proceeding *in propria persona* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On May 5, 2020, the assigned magistrate judge issued findings and recommendations recommending that the pending petition be dismissed as duplicative and successive. (Doc. No. 6.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within ten (10) days from the date of service of that order. To date, no party has filed objections.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a de novo review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

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1 In addition, the court declines to issue a certificate of appealability. A state prisoner
2 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
3 his petition, and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537
4 U.S. 322, 335-336 (2003); 28 U.S.C. § 2253.

5 If a court denies a petitioner's petition, the court may only issue a certificate of
6 appealability when a petitioner makes a substantial showing of the denial of a constitutional right.
7 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner must establish that
8 "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have
9 been resolved in a different manner or that the issues presented were 'adequate to deserve
10 encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting
11 *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).

12 In the present case, the court finds that petitioner has not made the required substantial
13 showing of the denial of a constitutional right to justify the issuance of a certificate of
14 appealability. Reasonable jurists would not find the court's determination that petitioner is not
15 entitled to federal habeas corpus relief debatable, wrong, or deserving of encouragement to
16 proceed further. Thus, the court DECLINES to issue a certificate of appealability.

17 Accordingly, the court orders as follows:

18 1. The findings and recommendations, filed May 5, 2020 (Doc. No. 6), is ADOPTED
19 IN FULL;

20 2. The petition for writ of habeas corpus is DISMISSED;

21 3. The Clerk of Court is directed to assign a district judge to this case for the purpose
22 of closing the case and then to ENTER JUDGMENT AND CLOSE THE CASE; and,

23 4. The Court DECLINES to issue a certificate of appealability.

24 IT IS SO ORDERED.

25 Dated: **June 2, 2020**

26 
UNITED STATES DISTRICT JUDGE